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IN THE

Supreme Court of the United States

October Term, 1974

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF AMICUS CURIAE FOR THE UNITED MINE WORKERS OF AMERICA

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BRIEF AMICUS CURIAE FOR THE UNITED MINE WORKERS OF AMERICA

INTRODUCTION

The United Mine Workers of America presents this brief in support of petitioners with the consent of counsel for both petitioners and respondent.

Although certiorari was granted with respect to two questions, this brief is addressed solely to the first, viz: whether

petitioners, charged with criminal contempt for the violation of an injunction issued pursuant to § 10 of the National Labor Relations Act, were entitled to a jury trial under 18 U.S.C. § 3692.

INTEREST OF AMICUS

The United Mine Workers of America is a labor union representing 120,000 coal miners in 23 states. Throughout its history the UMWA has been the target of federal court injunctions in cases arising out of labor disputes. Like petitioners, the UMWA is subject to injunctions issued at the behest of the National Labor Relations Board pursuant to § 10 of the National Labor Relations Act. Consequently, the UMWA is particularly interested in protecting the legal rights, including trial by jury, of the accused in criminal contempt proceedings that may grow out of such injunctions.

ARGUMENT

18 U.S.C. § 3692 provides for trial by jury "[i]n all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." On its face, this provision is applicable to contempt cases that result from injunctions issued pursuant to § 10(1) of the National Labor Relations Act, for § 10(1) is a law governing the issuance of injunctions in labor cases. The court below, however, held that § 3692 does not apply to such contempts.

The court noted that § 3692 is a recodification of § 11 of the Norris-LaGuardia Act and rejected the argument that the coverage of § 11 was extended beyond its original application when it was recodified into § 3692. Amicus agrees that the coverage of § 11 was not extended when it became § 3692. Yet it does not follow that § 3692 is inapplicable in a contempt case resulting from a § 10(1) injunction. That conclusion would require a demonstration that § 11 did not

apply to such injunctions. Analysis of the various statutes involved, however, reveals that § 11 was intended to and did apply to all labor injunctions, including those authorized by § 10(1).

I.

The Norris-LaGuardia Act was enacted to ensure that no injunction could issue in a labor case without meeting the requirements of the Act. Section 11 of the Act, specifically, provided for trial by jury in all contempt cases that resulted from labor injunctions.

In 1932, the Norris-LaGuardia Act imposed restrictions, both substantive and procedural, upon the issuance of injunctions by federal courts in any case "involving or growing out of a labor dispute."[1] As this Court has stressed, "[t]he language is broad because Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369 (1960).

It is important to be clear that the Act did not confer jurisdiction on the courts. No doubt Congress could have achieved its goal by creating jurisdiction in the federal courts to issue injunctions in labor cases under certain circumstances. That, however, was not the method Congress chose.[2] Instead, the Act "was intended drastically to cur-

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[1] The definition of "labor dispute" in § 13(c) is equivalent to that in § 2(9) of the National Labor Relations Act. See *United States* v. *Hutcheson*, 312 U.S. 219, 234 n. 4 (1941). There can be no question that the present case grew out of a "labor dispute," as defined.

[2] Apparently Congress chose not to grant jurisdiction over labor disputes in order to insure the Act's constitutionality, since the scope of federal power over labor relations was not settled until the constitutionality of the National Labor Relations Act was upheld in *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). See *Accommodation of the Norris-LaGuardia Act to Other Federal Statutes*, 72 Harv. L. Rev. 354, 366 & n. 87 (1958).

tail the equity jurisdiction of federal courts in the field of labor disputes." *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 101 (1940). See *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 562 (1938).

Consequently, it matters not whether federal jurisdiction is premised upon diversity of citizenship or the presence of a federal question, nor does it matter what sort of substantive cause of action is alleged. Regardless of the jurisdictional predicate or the cause of action involved, if an injunction is sought in a labor case, it cannot be granted unless the requirements of the Norris-LaGuardia Act are met. See, *e.g.*, *Bakery Sales Drivers' Union* v. *Wagshal*, 333 U.S. 437, 442 (1948) (local District of Columbia laws); *Allen Bradley Co.* v. *Local 3, Int'l Bhd. of Elec. Workers*, 325 U.S. 797, 812 (1945) (Sherman Act); *Elgin, J. & E. R.R.* v. *Brotherhood of R.R. Trainmen*, 302 F.2d 545 (7th Cir. 1962) (Railway Labor Act); *Teamsters Local No. 886* v. *Quick Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948) (Chandler Act); *Lee Way Motor Freight, Inc.* v. *Keystone Freight Lines, Inc.*, 126 F.2d 931 (10th Cir. 1942) (Motor Carrier Act). In short, "Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not, as it passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 372 (1960).

A corollary to that proposition is that the identity of the parties before the court is immaterial. In particular, the Act's restrictions are fully operable when the United States is seeking an injunction in a labor case. See *United States* v. *United Mine Workers*, 330 U.S. 258, 280 & nn. 34-35 (1947); *United States* v. *American Federation of Musicians*, 318 U.S. 741 (1943), *affirming* 47 F.Supp. 304 (N.D. Ill. 1942) (Sherman Act); *United States* v. *Hutcheson*, 312 U.S. 219, 227 (1941) (Sherman Act); *Anderson* v.

Bigelow, 130 F.2d 460 (9th Cir. 1942) (federal receiver); *United States* v. *Weirton Steel Co.*, 7 F.Supp. 255 (D. Del. 1934) (National Industrial Recovery Act); *cf. United Bhd. of Carpenters* v. *United States*, 330 U.S. 395 (1947) (Sherman Act prosecution; § 6 of Norris-LaGuardia Act applicable). In fact, one of the prime evils against which the Act was directed was the abuse of the injunctive process in labor cases by the federal government. *United States* v. *United Mine Workers*, 330 U.S. 258, 277-78 (1947); *id.* at 315-16, 318-19 (Frankfurter, J., concurring in the judgment).

In sum, Congress dealt with the problem of federal court intervention in labor disputes by enacting a statute that controlled the issuance of any injunction in any labor case.[3] Section 11 of the Act, moreover, provided for trial by jury in all cases of contempt "arising under this Act." That language can be misleading if read simplistically. The Act does not confer subject matter jurisdiction, so a case cannot "arise under" it in the sense that cases arise under the statutory grant of federal question jurisdiction. Nor does the Act create any substantive cause of action, so a case cannot "arise under" it in the sense that cases arise under the antitrust laws. In short, cases do not and cannot "arise under" an Act that simply limits the equity powers of courts. But Congress did not enact a nullity when it used the phrase "arising under" in § 11. The draftsman's meaning is abundantly plain. Inasmuch as the Act came into operation whenever a federal injunction was sought in a labor dispute, a contempt case would arise under the Act whenever it resulted from such an injunction.[4] Hence, § 11 guar-

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[3] Thus the Act entirely superseded § 20 of the Clayton Act. *United States* v. *United Mine Workers*, 330 U.S. 258, 270 (1947).

[4] Section 11, like the rest of the Act, made no exception for suits brought by the federal government. In contrast, § 24 of the Clayton Act provided that the protections of that Act, including jury trial, were not applicable to contempts growing out of suits "brought or prosecuted in the name of, or on behalf of, the United States." See now 18 U.S.C. §§ 402, 3691.

anteed a jury trial to any person charged with contempt for violating an injunction in a labor case.[5]

II.

In construing the Norris-LaGuardia Act in relationship to other federal labor statutes, this Court has consistently applied the Act to the fullest extent compatible with the purpose and effect of any other applicable statute. Section 11 of the Act was clearly compatible with the grant of power to issue labor injunctions under § 10 of the National Labor Relations Act.

The Norris-LaGuardia Act, of course, does not stand in isolation. It is one among the pattern of labor laws that must be melded together in furtherance of the national labor policy. See *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 217-18 (1962) (Brennan, J., dissenting). In certain situations involving other federal laws, the restrictions of the Norris-LaGuardia Act apply in full force. It is clear, for example, that a major purpose of the Act was to prevent injunctions altogether in the course of antitrust suits against unions. See *Allen Bradley Co.* v. *Local 3, Int'l Bhd. of Elec. Workers,* 325 U.S. 797 (1945); *United States* v. *Hutcheson,* 312 U.S. 219 (1941); *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.,* 311 U.S. 91 (1940). But when both the Act (which limits injunctions) and another labor statute (which seemingly authorizes injunctions) bear upon a case their provisions must necessarily be reconciled in order "best to effect the most important purposes of each statute." *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 224 (1962) (Brennan, J., dissenting).

In cases involving the Railway Labor Act, the Court has been careful to preserve the application of the Norris-LaGuardia Act to the greatest extent possible. When a positive mandate of the Railway Labor Act has been violated,

[5] In *United States* v. *United Mine Workers,* 330 U.S. 258, 269-89 (1947), the Court held that the Norris-LaGuardia Act was not intended to and did not apply when the labor dispute was between the federal government and its own employees. The Act, according to the Court, simply had no application whatever in that situation. It followed, of course, that § 11 did not apply either. *Id.,* at 298.

the courts are empowered to enjoin the violation. *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232, 237 (1949); *Virginian Ry.* v. *System Fed'n No. 40,* 300 U.S. 515, 563 (1937). Yet that Act does not prevent application of the "clean hands" provision in § 8 of the Norris-LaGuardia Act. *Brotherhood of R.R. Trainmen* v. *Toledo, P. & W. R.R.,* 321 U.S. 50 (1944); *Brotherhood of R.R. Trainmen* v. *Akron & B.B. R.R.,* 385 F.2d 581 (D.C. Cir. 1967). When a union strikes over matters pending in compulsory arbitration, the court has jurisdiction under the Railway Labor Act to enjoin it, *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.,* 353 U.S. 30, 39-42 (1957), but not when the union's conduct is lawful under the Act, *Order of R.R. Telegraphers* v. *Chicago & N.W. R.R.,* 362 U.S. 330, 338-39 (1960).

The guiding principle of these cases was stated to be that "[t]here must be an accommodation of [the Norris-LaGuardia Act] and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved." *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.,* 353 U.S. 30, 40 (1957). That principle has also controlled the application of Norris-LaGuardia in cases where jurisdiction is predicated upon § 301 of the Labor Management Relations Act. In *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 457-59 (1957), the Court held that § 7 of the Norris-LaGuardia Act did not apply to a § 301 suit for specific performance of an employer's promise to arbitrate, emphasizing that § 8 of the Act reflected the importance of the congressional policy of settlement of labor disputes by arbitration. This "accommodation process" was continued in *Boys Markets* v. *Retail Clerks Union,* 398 U.S. 235, 250 (1970), where the Court found that "[t]he literal terms of § 4 of the Norris-LaGuardia Act [could] be accommodated to the subsequently enacted provisions of § 301 (a) of the Labor Management Relations Act and the purposes of arbitration."

Thus, in cases under both the Railway Labor Act and § 301, the Court has accommodated the Norris-LaGuardia Act to the purposes and effects of other labor statutes. Yet this accommodation goes no further than is necessary. It has been held, for example, that the provision for attorneys' fees in § 7 of Norris-LaGuardia remains applicable in a § 301 suit. *United States Steel Corp.* v. *United Mine Workers of America,* 456 F.2d 483, 487-89 (3d Cir. 1972). The upshot is that a congressional exemption from the basic anti-injunction provisions of Norris-LaGuardia does not mean exemption from the entire Act.

In 1935, Congress in § 10 of the National Labor Relations Act specifically created jurisdiction in the federal courts to issue injunctions in labor cases. Under § 10(e), the National Labor Relations Board could petition a court of appeals to enforce a cease-and-desist order against an unfair labor practice, while under § 10(f) a "person aggrieved" could petition for review of such an order. In either case, § 10(e) and § 10(f) conferred jurisdiction on the court "to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

Inasmuch as these provisions were squarely in conflict with the existing anti-injunction provisions of the Norris-LaGuardia Act, it is not surprising that Congress exempted the jurisdiction conferred by § 10(e) and § 10(f) from the restrictions of the Act. Thus, § 10(h) provided:

> "When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115)."

Section 10(h), then, tracked the language of § 10(e) and § 10(f) and insured that the courts would be able to exercise their newly created equity jurisdiction.

In 1947, the Labor Management Relations Act amended § 10 to create jurisdiction in the federal courts to issue interlocutory injunctions to maintain the status quo at the outset of Board proceedings. Under § 10(j) and § 10(l) the Board could petition a district court for "appropriate temporary relief or restraining order" and for "appropriate injunctive relief" pending the Board's determination of the merits of a dispute. In either case, § 10(j) and § 10(l) conferred jurisdiction on the court "to grant to the Board such temporary relief or restraining order as it deems just and proper" and "to grant such injunctive relief or temporary restraining order as it deems just and proper."

The jurisdictional grants in § 10(j) and § 10(l) thus tracked the language of § 10(e) and § 10(f). Consequently, there was no need to enact a new provision of exemption from Norris-LaGuardia, and § 10(h) was left intact. As the dissent observed in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 221-22 (1962) (Brennan, J., dissenting):

> "Section 10(h) of the Act simply lifts the § 4 barrier in connection with proceedings brought by the National Labor Relations Board—in the Courts of Appeals for enforcement of Board cease-and-desist orders against unfair labor practices, and in the District Courts for interlocutory relief against activities being prosecuted before the Board as unfair labor practices. This repeal in aid of government litigation to enforce carefully drafted prohibitions already in the Act as unfair labor practices was, obviously, entirely appropriate, definitely limited in scope, predictable in effect, and devoid of any risk of abuse or misunderstanding."

Section 10(h), then, was designed to protect the jurisdiction granted in subsections (e), (f), (j), and (l) from the anti-injunction provisions of the Norris-LaGuardia Act. It allowed the courts to issue the specified injunctions without meeting the requirements imposed by the Act on the issuance of injunctions. Yet it is obvious that § 10(h) did not purport to render the Act wholly inapplicable.[6] That could have been done easily, just as § 208(b) of the Labor Management Relations Act did it for "national emergencies."[7] Section 10(h), however, speaks only to "the jurisdiction of courts sitting in equity" "[w]hen granting appropriate temporary relief or a restraining order."

Plainly, the application of § 11 of Norris-LaGuardia was wholly compatible with the issuance of injunctions under § 10 of the National Labor Relations Act. Section 11 was intended to apply to any contempt case resulting from any labor injunction. Section 10 injunctions could be issued without meeting the Norris-LaGuardia tests; labor injunctions issued pursuant to other federal statutes might have to meet those tests (e.g., antitrust cases) or they might not (e.g., contract cases). In any resulting contempt case, however, there was a right to a jury trial, for § 11 was meant to apply to any labor injunction that a federal court was empowered to issue.

III.

When § 11 was recodified as § 3692, the change in language recognized the existence of federal jurisdiction to issue injunctions in labor disputes. The scope of the provision, however, remained the same, and the right to trial by jury remained applicable in all contempt cases resulting from labor injunctions.

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[6] Congress quite evidently did not believe that § 10(h) rendered § 6 of Norris-LaGuardia inapplicable, for the 1947 amendments added § 2(13) to the National Labor Relations Act in order to exclude the operation of § 6 in NLRA cases. *Cf. United Mine Workers* v. *Gibbs*, 383 U.S. 715, 736 (1966) (dealing with §§ 301(e) and 303(b) of the Labor Management Relations Act).

[7] "In any case, the provisions of the [Norris-LaGuardia Act] shall not be applicable."

In 1932, the Norris-LaGuardia Act was able to funnel all labor injunctions through its procedures and requirements by the simple expedient of depriving the federal courts of power to issue such injunctions "except in a strict conformity with the provisions of this Act." § 1. The Act's restrictions were intended to apply fully in every case in which a federal labor injunction was sought. Consequently, § 11, which provides for jury trial of contempts "[i]n all cases arising under this Act," would unavoidably apply to every contempt resulting from a labor injunction. By 1948, however, there were other statutes that had to be taken into account. Both the Railway Labor Act, see *Virginia Ry.* v. *System Fed'n No. 40*, 300 U.S. 515, 563 (1937), and the National Labor Relations Act, in § 10(h), provided for the issuance of labor injunctions in spite of the restrictions of Norris-LaGuardia. Moreover, Congress could always confer jurisdiction on the courts to issue injunctions in additional situations, as indeed this Court would later hold had happened in 1947 with the enactment of § 301 of the Labor Management Relations Act, see *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235 (1970).

Accordingly, when the jury trial provision was transferred to Title 18, it was natural and useful to spell out its coverage to make clear that it applied, as § 11 had applied, to all cases of contempt arising from labor injunctions. The new language of § 3692 thus acknowledges the existence of a plurality of federal statutes pursuant to which labor injunctions might be sought and states simply that the jury trial safeguard applies "in any case involving or growing out of a labor dispute." In short, in recodifying § 11 as § 3692, the revisers simply clarified its intent in keeping with the existence of more recent statutes.

IV.

Although it is true that when issuing § 10(l) injunctions, "the jurisdiction of courts sitting in equity" is not limited by the Norris-LaGuardia Act, it does not follow that a resulting criminal contempt case is free from the Act's jury trial requirement.

Respondent has noted that § 10(h) of the National Labor Relations Act provides that the jurisdiction of the courts to issue § 10(1) injunctions is not limited by the Norris-La-Guardia Act. From this premise, respondent has argued that "a proceeding to obtain compliance with the injunction should be similarly excepted, since the latter proceeding is simply 'a continuance of the earlier [Section 10(1)] action' and is the final 'step in the enforcement' of the Section 10(1) order. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F.2d 302, 305 (C.A. 2)." Memorandum for the Respondent, p. 20.

There are several short answers to this argument. One is that § 10(h) protects "the jurisdiction of courts sitting in equity" and that this Court has held that a criminal contempt case is "an independent proceeding at law" and thus that a statute requiring jury trial in such a case does not invade a court's equity jurisdiction. *Michaelson* v. *United States*, 266 U.S. 42, 64-65 (1924). Indeed, it is difficult to understand how the requirement of a jury in a criminal contempt case could limit "the jurisdiction of courts sitting in equity," that is, the power of those courts to frame and issue injunctions. It is even more difficult to understand how respondent can characterize a criminal contempt case as "a proceeding to obtain compliance with the injunction." Finally, it bears pointing out that the *Hopwood Retinning* case held that a civil, as distinguished from a criminal, contempt proceeding was "a step in the enforcement" of a court of appeals' order and thus could be instituted by motion served upon counsel. 104 F.2d, at 305.

Of more importance, however, respondent's argument reflects an erroneous approach to the interpretation of labor statutes. As discussed above, these statutes must be accommodated to each other to the greatest extent possible. Section 10(h) expressly protects the power of the courts to issue certain labor injunctions. To go further and conclude

that § 10(h) also prevents a jury trial in criminal contempt cases resulting from those injunctions is not to accommodate the two statutes, but to obliterate one of them.

CONCLUSION

Amicus urges that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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